

Assembly Bill No. 1516

CHAPTER 52

An act to amend Section 3048 of the Family Code, relating to child custody, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 14, 2003. Filed with
Secretary of State July 14, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1516, Bates. Child custody: abduction.

Existing law makes it a crime to take, entice away, keep, withhold, or conceal a child and maliciously deprive a lawful custodian of a right to custody, or a person of a right to visitation. Existing law provides immunity from this crime for certain persons, including, but not limited to, a person with a right to custody of a child who has been a victim of domestic violence and who complies with specified requirements. Existing law, which incorporates the federal Synclair-Cannon Child Abduction Prevention Act of 2002, requires a court, in cases in which the court becomes aware of facts that may indicate a risk of abduction of a child, to consider specified factors in determining the risk of abduction and whether measures are needed to prevent that abduction.

This bill would modify those factors. The bill would also provide that state law incorporating the Synclair-Cannon Child Abduction Prevention Act of 2002 does not affect the applicability of the provision that immunizes persons with a right to custody under certain circumstances from the crime of taking, enticing away, keeping, withholding, or concealing a child and maliciously depriving a lawful custodian of a right to custody, or a person of a right to visitation.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 3048 of the Family Code is amended to read:

3048. (a) Notwithstanding any other provision of law, in any proceeding to determine child custody or visitation with a child, every custody or visitation order shall contain all of the following:

- (1) The basis for the court's exercise of jurisdiction.
- (2) The manner in which notice and opportunity to be heard were given.

(3) A clear description of the custody and visitation rights of each party.

(4) A provision stating that a violation of the order may subject the party in violation to civil or criminal penalties, or both.

(5) Identification of the country of habitual residence of the child or children.

(b) (1) In cases in which the court becomes aware of facts which may indicate that there is a risk of abduction of a child, the court shall, either on its own motion or at the request of a party, determine whether measures are needed to prevent the abduction of the child by one parent. To make that determination, the court shall consider the risk of abduction of the child, obstacles to location, recovery, and return if the child is abducted, and potential harm to the child if he or she is abducted. To determine whether there is a risk of abduction, the court shall consider the following factors:

(A) Whether a party has previously taken, enticed away, kept, withheld, or concealed a child in violation of the right of custody or of visitation of a person.

(B) Whether a party has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of the right of custody or of visitation of a person.

(C) Whether a party lacks strong ties to this state.

(D) Whether a party has strong familial, emotional, or cultural ties to another state or country, including foreign citizenship. This factor shall be considered only if evidence exists in support of another factor specified in this section.

(E) Whether a party has no financial reason to stay in this state, including whether the party is unemployed, is able to work anywhere, or is financially independent.

(F) Whether a party has engaged in planning activities that would facilitate the removal of a child from the state, including quitting a job, selling his or her primary residence, terminating a lease, closing a bank account, liquidating other assets, hiding or destroying documents, applying for a passport, applying to obtain a birth certificate or school or medical records, or purchasing airplane or other travel tickets, with consideration given to whether a party is carrying out a safety plan to flee from domestic violence.

(G) Whether a party has a history of a lack of parental cooperation or child abuse, or there is substantiated evidence that a party has perpetrated domestic violence.

(H) Whether a party has a criminal record.

(2) If the court makes a finding that there is a need for preventative measures after considering the factors listed in paragraph (1), the court



shall consider taking one or more of the following measures to prevent the abduction of the child:

(A) Ordering supervised visitation.

(B) Requiring a parent to post a bond in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to offset the cost of recovery of the child in the event there is an abduction.

(C) Restricting the right of the custodial or noncustodial parent to remove the child from the county, the state, or the country.

(D) Restricting the right of the custodial parent to relocate with the child, unless the custodial parent provides advance notice to, and obtains the written agreement of, the noncustodial parent, or obtains the approval of the court, before relocating with the child.

(E) Requiring the surrender of passports and other travel documents.

(F) Prohibiting a parent from applying for a new or replacement passport for the child.

(G) Requiring a parent to notify a relevant foreign consulate or embassy of passport restrictions and to provide the court with proof of that notification.

(H) Requiring a party to register a California order in another state as a prerequisite to allowing a child to travel to that state for visits, or to obtain an order from another country containing terms identical to the custody and visitation order issued in the United States (recognizing that these orders may be modified or enforced pursuant to the laws of the other country), as a prerequisite to allowing a child to travel to that county for visits.

(I) Obtaining assurances that a party will return from foreign visits by requiring the traveling parent to provide the court or the other parent or guardian with any of the following:

(i) The travel itinerary of the child.

(ii) Copies of round trip airline tickets.

(iii) A list of addresses and telephone numbers where the child can be reached at all times.

(iv) An open airline ticket for the left-behind parent in case the child is not returned.

(J) Including provisions in the custody order to facilitate use of the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400)) and the Hague Convention on the Civil Aspects of International Child Abduction (implemented pursuant to 42 U.S.C. Sec. 11601 et seq.), such as identifying California as the home state of the child or otherwise defining the basis for the California court's exercise of jurisdiction under Part 3 (commencing with Section 3400), identifying the United States as the country of habitual residence



of the child pursuant to the Hague Convention, defining custody rights pursuant to the Hague Convention, obtaining the express agreement of the parents that the United States is the country of habitual residence of the child, or that California or the United States is the most appropriate forum for addressing custody and visitation orders.

(K) Authorizing the assistance of law enforcement.

(3) If the court imposes any or all of the conditions listed in paragraph (2), those conditions shall be specifically noted on the minute order of the court proceedings.

(4) If the court determines there is a risk of abduction that is sufficient to warrant the application of one or more of the prevention measures authorized by this section, the court shall inform the parties of the telephone number and address of the Child Abduction Unit in the office of the district attorney in the county where the custody or visitation order is being entered.

(c) The Judicial Council shall make the changes to its child custody order forms that are necessary for the implementation of subdivision (b). This subdivision shall become operative on July 1, 2003.

(d) Nothing in this section affects the applicability of Section 278.7 of the Penal Code.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

There has been some confusion regarding Chapter 856 of the Statutes of 2002, which added the “Synclair-Cannon Child Abduction Prevention Act” to the Family Code. It is vital to clarify that this act does not affect the applicability of Section 278.7 of the Penal Code, which protects victims of domestic violence and their children. This act is necessary to ensure that the original spirit of the abduction prevention act is preserved, which is to prevent the illegal abduction of children, without otherwise compromising the ability of domestic violence victims to escape abusive situations. This act is deemed urgent and should take effect immediately in order to prevent any unintended legal consequences that may result in penalizing innocent victims of domestic violence.

